

MT LEGISLATIVE HISTORY

Chapter 429 19 80

Bill H _____ S 275

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 17 ✓ C

Hearing Date(s) Feb 13 ✓ C

Mar 27 ✓ C

Feb 16 ✓ C

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_____ C

Date Out Mar 27 ✓ C

Feb 16 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE CONC IN AME DA
258		3/16/87						3/23/87			
261		3/17/87								3/18/87	
275		3/17/87								3/27/87	
286		3/19/87								3/27/87	
289		3/17/87						3/23/87			
303		3/17/87								3/25/87	
306		3/17/87						3/17/87			
338		3/18/87								3/24/87	
361		3/18/87								3/23/87	
363		3/18/87								3/27/87	
372		3/19/87									3/
375		3/19/87								3/26/87	
380		3/19/87								3/26/87	

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Rep. Brown questioned Mr. Murphy on how the Senate came up with the 1,000 feet measurement. He stated that it was an arbitrary choice that works out to be about a block away from the school.

Rep. Eudaily asked Mr. Murphy about the change stating that the term "or both" is used, which makes it possible to double the prison time plus double the fine. Mr. Murphy stated it was his belief that the fine was present in all the areas of the bill but stated Rep. Eudaily appears to be correct in the fact that the fine is listed in the area of the bill dealing with the criminal sale of dangerous drugs.

Mr. Murphy closed the hearing on SB 261 for Sen. Brown.

SENATE BILL NO. 275: Sen. Jergeson, District No. 8, stated this is a straight forward bill that requires the financial resources of a youth and the parents of a youth charged with a felony to be considered in determining eligibility for court-appointed counsel. He stated he hopes the bill will in some measure provide an incentive for parents to keep a better handle on their kids.

PROPOSERS: GORDON MORRIS, Montana Association of Counties, went on record in support of SB 275 stating it is a very simple bill requesting and authorizing the determination of parental resources in a determination of eligibility of indigent defense.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 275: Rep. Mercer asked Sen. Jergeson about the language used in the wording which states "charged with a felony", and questioned if that is the correct terminology. He stated he is not sure if the language is absolutely correct but the Senate Judiciary did struggle with it and decided to leave the language as it is written. Rep. Mercer asked Sen. Jergeson if it was his intention that every youth charged in youth court with an offense that would be a felony if they were an adult, that this law should apply to them. He stated that was correct.

Sen. Jergeson closed the hearing on SB 275 by stating this is a serious bill and if there are any suggestions towards properly amending it he is prepared to accept the judgement of the House Judiciary Committee.

SENATE BILL NO. 289: Sen. Van Valkenburg, District No. 30, stated this bill comes by request of the Missoula Sheriff's Office. Presently Montana does not have a procedure to recognize the validity of pre-signed waivers of extradition

agreements and this authorizes the return to another state of a person arrested in this state for violation of bail, probation or parole agreements. Extradition is a procedure that is in the United States Constitution and is very important but needs some modification. He explained that section 1 says if an individual has signed a pre-signed waiver of extradition and in almost all cases, in order to get permission to leave another state one has to do this, then the judge can order the person transferred. This bill will save considerable jail time in county jails.

PROPOSERS: THOMAS FULLERTON, Missoula County Sheriff, stated that SB 275 allows the sheriff's office to return fugitives without a formal proceeding and he urged support. He stated this bill will encourage all states to adopt uniform policies and procedures so as to facilitate the extradition of fugitives from justice. He submitted written testimony. (Exhibit A).

JOHN NORTH, Governor's Office, stated this is a cost saving measure for local governments. He urged support for this legislation.

CURT CHISOLM, Deputy Director for the Department of Institutions, went on record in support of SB 275.

There were no further proponents and no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 289: Rep. Rapp-Svrcek asked Sen. Van Valkenburg if defendants must sign the forms as a condition of their parole. Sen. Van Valkenburg stated, "that is correct". Rep. Gould stated we almost have to pass this bill or everyone will see the procedure has been done wrong in the past. Sen. Van Valkenburg stated that was also correct.

Sen. Van Valkenburg closed the hearing on SB 289.

SENATE BILL NO. 303: Sen. Halligan, District No. 29, stated this bill was partially submitted at the request of SRS and contains provisions of Sen. Mazurek's bill. He pointed out that SB 303 revises procedures to be followed in prosecuting child abuse cases, adding psychological care to the definition of adequate health care. This bill also authorizes petitions for permanent legal custody with the right to consent to adoption, providing for service by publication. Section 6, addresses appeals of court orders or decrees. These orders shall be given precedence on the calendar of the Supreme Court over all other matters, unless otherwise provided by law.

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 17, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE

BILL NO.

275

DATE _____

March 17, 1987

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

372, BE NOT CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED 10-6. SB 372, BE NOT CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 48: Rep. Mercer stated this bill was in a tort reform subcommittee and it was unanimously favored by the subcommittee to table the bill. He stated the subcommittee could not recommend passage in its present form. Rep. Miles moved to table the bill. A voice vote was called for and the motion CARRIED 11-4. SB 48, TABLED.

ACTION ON SENATE BILL NO. 173: Rep. Miles moved that SB 173, BE CONCURRED IN. Question was called and a roll call vote was called for. The motion FAILED on a tie vote of 9-9. Rep. Strizich moved, BE NOT CONCURRED IN. Question was called and a roll call vote was called for. The motion CARRIED 11-7. (Roll call vote attached). SB 173, BE NOT CONCURRED IN.

ACTION ON SENATE BILL NO. 275: Rep. Hannah moved that SB 275, BE CONCURRED IN. Rep. Mercer stated the bill has some technical problems. He pointed out that there is a conflict in regard to the minor's assets. The issue seems to be the concept of checking into the youth's parents assets and the youth's assets before a court can appoint an attorney. If they have sufficient assets then the court can deny them a free attorney. Rep. Mercer moved to amend by striking lines 18-20 on page 1 in their entirety and amend page 2, lines 2, 9 and 11. (See amendments attached). Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Hannah moved the bill, BE CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion carried 15-1 with Rep. Brown dissenting. SB 275, BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO 286: Rep. Mercer moved that SB 286, BE CONCURRED IN. He moved the amendments adopted by the subcommittee. Rep. Rapp-Svrcek made a substitute motion to amend the amendments by striking the reference to prohibiting campfires and also striking the language in regard to overnight camping by reinserting the original language of no camping within sight of a dwelling. He also stated that he does not see any problem with building a campfire within the high water mark of a stream bed. Rep. Addy spoke against the motion. He pointed out that we are not talking about camping on public lands. The language in the bill relates to camping on private land without the landowners permission. Minimal impact camping is a fine policy to adopt in this state on lands adjacent to public waters, he said. Rep. Addy further stated that he supports Rep. Mercer's amendments.

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 27, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)		✓	✓
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

JUDICIARY

Mr. Speaker: We, the committee on

SENATE BILL NO. 275

report

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

1. Title, line 8.

Strike: "SECTIONS 46-B-102 AND"

Insert: "SECTION"

2. Page 1, lines 11 through 20.

Strike: Section 1 of the bill in its entirety

Renumber: subsequent section

3. Page 2, line 1.

Strike: "Appointed"

Insert: "Except as provided in subsection (3), appointed"

4. Page 2, line 9.

Following: "with"

Insert: "an offense which, if committed by, an adult, would be

5. Page 2, line 11.

Following: "parents"

Insert: "and may deny or appoint counsel accordingly"

THIRD

BLUE

REP. HANSEN WILL CARRY THE BILL!

reading copy ()
color

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

---BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES-----	COMMITTEE ACTION-----	REREFERRED TO COMM----	DATE OUT-
SB0229	1/27	2/10		PASS AS AMENDED		2/16
MAZUREK, JOSEPH P. PROHIBIT COURT-ORDERED PLACEMENT IN COMMUNITY-BASED SERVICES						
SB0231	1/28	2/06		PASS AS AMENDED		2/20
KEATING, THOMAS F. REVISE LAW RELATING TO FORFEITURE AND SALE OF ITEMS RELATING TO DRUG OFFENSE						
SB0239	1/29	2/10		PASS AS AMENDED		2/12
BLANKOCK, CHET REMOVE TERMINATION OF GOVERNMENTAL TORT LIABILITY LIMITS						
SB0252	2/02	2/11		PASS AS AMENDED		2/18
BROWN, PAT PERMIT DISABILITY INSURANCE POLICIES TO CONTAIN A SUBROGATION CLAUSE						
SB0256	1/30	2/09		PASS AS AMENDED		2/9
JOHNSON, JUDY H. CLARIFY SRS RESPONSIBILITY IN CUSTODY INVESTIGATIONS						
SB0258	1/30	2/09		PASS AS AMENDED		2/9
HARRIS, ROBERT J. REVISE LAWS RELATING TO TRAINING OF JUSTICES OF THE PEACE						
SB0261	2/02	2/13		PASS AS AMENDED		2/16
HARRIS, ROBERT J. INCREASE PENALTY FOR DRUG SALE TO MINOR NEAR A SCHOOL						
SB0269	2/02	2/13		TABLED		tabled on 2/16 -
STAD, ALLEN C. GENERALLY REVISE LAW ON CORONERS						
SB0275	2/03	2/13		DO PASS		2/16
JOHNSON, GREG CONSIDER PARENTAL RESOURCES FOR MINORS APPOINTED COUNSEL IN HOMICIDE CASE						
SB0289	2/05	2/16		PASS AS AMENDED		2/16
VALKENBURG, FRED AUTHORIZE PRESIGNED EXTRADITION WAIVERS						
SB0303	2/06	2/11		PASS AS AMENDED		2/16
LIGAN, MIKE REVISE PROCEDURES FOR CHILD ABUSE PROSECUTION						

CONSIDERATION OF SENATE BILL 275: Senator Greg Jergeson, Senate District 8, introduced the bill, which requires that the financial resources of a youth and the parents of a youth charged with a felony be considered in determining eligibility for court-appointed counsel. He explained a good friend of his was shot by a youth and how it victimized the friend's family. He felt the parents will be aware of the children's behavior more if they know they might have to pay for the child's behavior later on.

PROPOSERS: Toni Hagen, Montana Association of Counties, supported the bill. (Exhibit 3)

OPPOSERS: There were no opponents.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock felt kids that do crimes such as shooting someone, have problems at home. He asked if a parent did have money but refuses to get counsel for the kid, will the kid still get court-appointed counsel. Senator Jergeson said the parent will have to give up their responsibility of the kid in the court to allow a court-appointed attorney, if the parents can pay for counsel.

Senator Beck inquired if the bill is described just for public defenders, or special counsel. Senator Jergeson replied it is mostly for public defenders.

Senator Mazurek asked if one can require a parent to pay for counsel. Senator Jergeson was not sure if there was a law against it.

Senator Jergeson closed the hearing on SB 275.

CONSIDERATION OF SENATE BILL 261: Senator Bob Brown, Senate District 2, introduced the bill, which increases the penalty for an adult convicted of a sale of a dangerous drug if the sale was to a minor, or within the proximity of a school. He said the bill doubles the minimum penalty for this offense from 2 years to 4 years. He explained each section, and said he thought it would deter adults from selling drugs to a juvenile.

PROPOSERS: Mark Murphy, Attorney General's office, and County Attorneys Association, supported the bill because many crimes are committed between an adult and a minor. He said a drug pusher is like a McDonald's building next to the school for walk-in business. He said the bill doubles all minimum penalties dealing with drug dealing to minors.

50th LEGISLATIVE SESSION -- 1987

Date Feb. 13th

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>			Late X

Each day attach to minutes.

- bill simply asks that parental resources
be considered, in appointing counsel for
minors.

Leaves up to a ~~parent~~ ^{parent} ~~assess~~
all intelligent. when parents may want to do
to assist a coming ~~and~~ ^{down} into reality,
then passing those costs to the taxpayers as
a whole.

Counties severely impacted by H. Ch. costs
this bill ~~could~~ ^{could} ~~provide~~ ^{provide} some relief in
some ~~cases~~ ^{cases}.

Counsel with policy with policy
of ~~appointing~~ ^{appointing} ~~the~~ ^{the} ~~person~~ ^{person} ~~is~~ ^{is} ~~not~~ ^{not} ~~truly~~ ^{truly} ~~intelligent~~ ^{intelligent}
if the person is not truly intelligent.
or if there are other sources of funding to assist in
the costs.

ACTION ON SENATE BILL 303: Valencia Lane distributed amendments. (Exhibit 3) Senator Mazurek stated the word "psychological" should be taken from the subsection (c) and put in subsection (4) and include in it "adequate health care". Ms. Lane explained the first 4 amendments removed "psychological care" out of the definition of "HARM TO A CHILD'S HEALTH OR WELFARE". She said the word "psychological" will go where Senator Mazurek suggested. Ms. Lane stated the last two amendments address a concern Senator Halligan had about personal service. Senator Mazurek inquired if one can get personal jurisdiction over someone by publication. Ms. Lane pointed out page 7, lines 6 and 7. Senator Halligan said many of these parents have not been around for years and years, so you can't serve a person if you don't know where he is at. Senator Halligan moved the amendments. The motion CARRIED. Senator Halligan moved SB 303 DO PASS AS AMENDED. The motion CARRIED.

ACTION ON SENATE BILL 229: Senator Mazurek handed out amendments from Dennis Taylor of the Department of Institutions. (Exhibit 4) Senator Mazurek explained the problem is the courts are actively placing particular people into certain programs instead of requiring people who are eligible for services to go through the same waiting process. Mr. Taylor said the department wants to correct the problem by the amendments he presented to the committee as Exhibit 4. He said the amendments would make sure community base services are discretionary services. Senator Mazurek asked if the amendments would allow the court to determine need and refer the individual to the division and then you place the individual. Mr. Taylor said the amendment would maintain the current practice where he reports to the district court in charge on an annual basis. Senator Halligan moved the amendments. The motion CARRIED.

Senator Halligan moved SB 229 DO PASS AS AMENDED. The motion CARRIED.

ACTION ON SENATE BILL 275: Senator Mazurek thought the state could not require parents to pay for the court-appointed counsel. Senator Galt felt the state could get a real bad kid to handle in court. Senator Mazurek said the statute right now states parents are only liable for \$2,500 for malicious acts, but there is no statute now that makes a parent pay for counsel. Ms. Lane looked up the Youth Court Act, and it states if a parent doesn't want to pay, he doesn't have to. Senator Mazurek said

what the bill would leave on the books is counsel cannot be denied at all for any reason. Senator Brown said a quorum of the committee has signed the bill. Senator Pinsoneault felt it will cause the parents to bare their soul with having to disclose their financial records. Senator Mazurek said the bill doesn't force the parents to pay for counsel, they just have to disclose their financial information. The committee discussed the shooting in Lewistown on December 4, 1986.

Senator Brown moved Senate Bill 275 DO PASS. The motion CARRIED with Senators Crippen, Bishop and Mazurek voting no.

ACTION ON SENATE BILL 261: Senator Brown explained the bill. Senator Pinsoneault moved on page 2, lines 20-21: Following: "place" on line 20, Strike: "on or within 1,000 feet", Insert: "in close proximity". Senator Mazurek felt this amendment was too vague and will probably cause constitutional problems. Senator Pinsoneault withdrew the motion. Senator Blaylock asked if the bill includes an 18 year old senior being prosecuted for selling on the school grounds. Senator Brown said yes. Senator Blaylock asked if "coke" is becoming a problem in the schools. Senator Brown thought "crack" is becoming a problem. Senator Crippen said the sentencing can be suspended. Senator Brown moved the bill DO PASS. Senator Mazurek wanted to know if anyone wanted to raise the age to 21 in the bill. Senator Pinsoneault said if they are old enough to vote, they are old enough to go to jail. Senator Mazurek said an 18 year old might make mistakes. It could be the first time the 18 year old sold the stuff. He felt maybe hard time might do these kids good, or it might not. Senator Crippen made a substitute motion to amend the bill to change the age to 21. The motion CARRIED with Senators Galt and Pinsoneault voting no.

Senator Brown's motion DO PASS AS AMENDED, CARRIED.
(Exhibit 5 - amendments)

ACTION ON SENATE BILL 152: Valencia Lane gave amendments to the committee. (Exhibit 6) She explained the amendments and said amendments 5 and 7 were the most important. Senator Crippen wanted to make sure in the #5 amendment that the policy is a "written policy" process. Senator Crippen said it is extending the days to 300 days. The committee decided to insert "written" rule or policy

STANDING COMMITTEE REPORT

February 16

37

19.....

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

having had under consideration..... SENATE BILL No. 275

first reading copy (white)
color

Consider parental resources for minors appointed counsel in
homicide case.

Respectfully report as follows: That..... SENATE BILL No. 275

DO PASS

XXXXXXXXXX
DO NOT PASS

Senator Mazurek

Chairman.